

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

## **MEMORANDUM AND ORDER**

This matter is before the Court on plaintiff's motion for an extension of time to file a notice of appeal pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The motion will be granted.

Plaintiff filed the instant action on July 19, 2018. On December 3, 2018, the Court determined that the complaint was legally frivolous and failed to state a claim upon which relief could be granted and dismissed it pursuant to 28 U.S.C. § 1915(e)(2)(B). *See* ECF Nos. 6 and 7. Plaintiff filed a notice of appeal of this dismissal on January 9, 2019; the notice of appeal states that it was signed by plaintiff on December 17, 2018.<sup>1</sup>

Pursuant to Rule 4 of the Federal Rules of Appellate Procedure, plaintiff's notice of appeal was due within thirty days after entry of the judgment or order being appealed. On January 10, 2019, the United States Court of Appeals for the Eighth Circuit sent plaintiff a letter,

<sup>1</sup>Although the notice of appeal bears a date of December 17, 2018, plaintiff did not show timely filing either by a declaration in compliance with 28 U.S.C. § 1746, or by a notarized statement pursuant to Fed. R. App. P. 4(c).

advising him that his notice of appeal appeared to be untimely and informing him of the option of filing a motion for an extension of time with the District Court.

Under Rule 4(a)(5)(A) of the Federal Rules of Appellate Procedure, this Court may extend the time for filing a notice of appeal if the “party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires” and if the “party shows excusable neglect or good cause.”<sup>2</sup> Plaintiff has filed his motion for an extension of time within the 30-day period, so the Court must decide whether he has shown excusable neglect or good cause.

In his motion for extension of time to file a notice of appeal, plaintiff says that he filed his notice of appeal late because “I have started the Administrative Remedy of INFORMAL RESOLUTION REQUEST grievance of E.R.D.C.C. obstruction of my due process appeal 4:18-CV-1199-SNLJ MEMORANDUM AND ORDER.” Plaintiff then refers the Court to his “yellow legal paper copies sen[t] within the Dec. 17, 2018 notice of appeal.” The Court had filed these yellow legal papers at ECF No. 11-1. These yellow legal papers, handwritten by plaintiff, appear to establish that plaintiff was denied access to his “brown legal portfolio” by ERDCC staff at some point between when he signed his notice of appeal on December 17, 2018 and when it was stamped “mailed from” ERDCC on January 7, 2019. *See* ECF No. 11-1. Presumably, if he were not denied access to this legal portfolio, he would have timely mailed his notice of appeal on December 17, 2018.

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<sup>2</sup>The United States Court of Appeals for the Eighth Circuit has counseled that pro se appellants may be given “special consideration . . . regarding their notices of appeal.” *Weekley v. Jones*, 927 F.2d 382, 386 (8th Cir. 1991).

Upon consideration of the reasons given by plaintiff and review of the documentation submitted on January 9, 2019 (*see* ECF No. 11-1), the Court finds that he has shown good cause. As a result, the motion for an extension of time to file the notice of appeal will be granted.

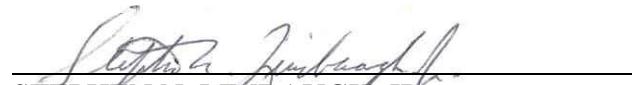
Pursuant to Federal Rule of Appellate Procedure 4(a)(5)(C), plaintiff's notice of appeal is due "14 days after the date [of this order]." The Court notes, however, that plaintiff filed his notice of appeal on January 9, 2019. Because the Court is granting plaintiff an extension of time, the Court will deem the notice of appeal filed January 9, 2019 timely filed.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion for an extension of time to file a notice of appeal pursuant to Rule 4 of the Federal Rules of Appellate Procedure is **GRANTED**.

[ECF No. 21]

Dated this 1<sup>st</sup> day of February, 2019.



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STEPHEN N. LIMBAUGH, JR.  
UNITED STATES DISTRICT JUDGE